**SANDRIFARM SDN BHD**

**v.**

**PEGAWAI PEMEGANG HARTA MALAYSIA**

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
DENIS ONG JCA
[CIVIL APPEAL NO: N-02-300-1998]
18 FEBRUARY 2000

***CONTRACT:*** *Formation - Concluded contract - Sale and purchase of land - Whether there was a valid and enforceable contract - Purchaser accepted vendor's offer - Deposit paid to vendor - Adequacy of consideration, whether relevant - Whether vendor could refuse to complete sale - Whether there was evidence of misrepresentation or fraud*

The appellant had earlier filed an originating summons seeking a declaration that it had accepted the respondent's offer to sell a piece of land, and an order that the respondent execute the sale and purchase agreement and complete the sale. This was the appellant's appeal from the decision of the High Court dismissing its originating summons. The issues before the instant court were: (i) whether there was a valid contract between the parties notwithstanding the non-execution of the sale and purchase agreement; and (ii) whether it was justifiable for the High Court to have refused the appellant the relief it sought.

**Held:**
**Per Shaik Daud Ismail JCA**

**[1]** A valid and enforceable contract had materialised between the parties. The appellant had accepted the respondent's offer to sell the land and had paid a 10% deposit of the purchase price which was accepted by the respondent. The parties, the land, the purchase price and the terms of the contract had all been identified with sufficient certainty.

**[2]** The learned judge had erred in considering ss. 21 and 26 of the Contracts Act 1950. He was wrong in holding that the respondent's offer was not made freely by reason of the inadequacy of the consideration; that the respondent was thus at liberty to refuse to complete the sale; and that the agreement was void. Furthermore, the valuation report obtained by the respondent after the formation of the contract was irrelevant and ought

not to have been considered by the learned judge. The learned judge was also wrong in holding that there was misrepresentation or fraud on the part of the appellant in regard to the purchase price; there was no such evidence.

*[Appeal allowed.]*

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu telah, pada awalnya, memfailkan suatu saman pemula untuk mendapatkan satu deklarasi bahawa ia telah menerima tawaran responden untuk menjual sebidang tanah, dan suatu perintah memerintahkan responden menyempurnakan perjanjian jual-beli dan memenuhi jualan tersebut. Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi membuang saman pemulanya. Isu-isu di hadapan mahkamah semasa adalah: (i) samada terdapat suatu kontrak yang sahih antara parti-parti walaupun terdapat ketidaksempurnaan dalam perjanjian jual-beli tersebut; dan (ii) samada Mahkamah Tinggi berjustifikasi dalam keengganannya untuk memberi perayu relif yang dipohonnya.

**Diputuskan:**
**Oleh Shaik Daud Ismail HMR**

**[1]** Suatu kontrak yang sah dan boleh dikuatkuasakan telah terhasil di antara parti-parti tersebut. Perayu telah bersetuju menerima tawaran responden untuk menjual tanah tersebut dan telah membayar deposit sebanyak 10% dari harga beli yang telah diterima oleh responden. Parti-parti, tanah tersebut, harga beli dan terma-terma kontrak telahpun semuanya dikenalpasti dengan secukupnya.

**[2]** Hakim bijaksana telah membuat kesalahan dalam menimbangkan ss. 21 dan 26 Akta Kontrak 1950. Beliau berlaku salah dalam memutuskan bahawa tawaran responden tidak dibuat secara sukarela atas alasan kekurangan balasan; bahawa responden bebas untuk enggan memenuhi jualan tersebut; dan bahawa perjanjian tersebut terbatal. Tambahan pula, laporan penilaian yang diperolehi oleh responden selepas pembentukan kontrak tersebut tidak relevan dan tidak sepatutnya dipertimbangkan oleh hakim bijaksana. Hakim bijaksana juga salah bilamana beliau memutuskan bahawa terdapat salah nyataan atau fraud dilakukan oleh perayu berkenaan dengan harga beli; tiada bukti mengenai hal tersebut.

*[Rayuan dibenarkan.]*

**Case(s) referred to:**
*Charles Grenier Sdn Bhd v. Lau Wing Hong [1997] 1 CLJ 625* ***(foll)***

**Legislation referred to:**
Bankruptcy Act 1967, s. 85(3)
Contracts Act 1950, ss. 21, 26

*For the appellant - M Pathmanathan; M/s Yee Teck Fah & Co*
*For the respondent - Zaliha Mohd Janis*

*[Appeal from High Court, Seremban; Originating Summons No: 24-681-1997]*

*Reported by Alex KC Lee*

## JUDGMENT

**Shaik Daud Ismail JCA:**

This is an appeal against the decision of the High Court Seremban given on 29 April 1998 whereby the learned judge dismissed the originating summons dated 7 November 1997 (the OS). The OS was filed by the appellant for a declaration that, the appellant had accepted the respondent's offer to purchase a piece of land and for an order that the respondent do sign the sales and purchase agreement and complete the sale.

The facts of the case which are not in dispute are that by a letter dated 13 September 1997, the respondent informed the appellant that the respondent's head office had approved the sale of 9,461.107/10,000 shares in a piece of land held under Geran No. 17268 Lot No. 4034, Mukim of Port Dickson (hereinafter referred to as "the said land"). This sale was to be by private treaty to the appellant subject to the terms and conditions contained therein. They are:

(a) Sale price shall be RM1.9 million.

(b) The sale is subject to all existing incumbrances.

(c) The official assignee shall not be responsible should the purchaser fail to effect a transfer of the title.

(d) The official assignee shall be absolved from any costs incurred in the sale.

(e) Payment of 10% of the purchase price shall be made within seven days from the receipt of the letter of offer and to pay the balance within a period of three months, thereafter.

The terms appeared to be quite normal and the appellant duly accepted the offer and on 15 September 1997, paid a sum of RM190,000 being 10% of the purchase price. The respondent issued a receipt for the same. Thereafter the appellant forwarded a draft copy of the sale and purchase agreement for the attention and approval of the respondent. The respondent made several amendments to the draft and returned the same to the appellant. The appellant agreed to the amendments and fair copies of the agreement were forwarded to the respondent for execution. The respondent did not execute the agreement. One month later the respondent requested the government valuer to value the said land. The government valuer in his report dated 27 October 1997, valued the said land to be RM3.765 million. Based on this report the respondent refused to conclude the sale, and filed a summons in chambers for an order to cancel the sale and purchase agreement under s. 85(3) of the Bankruptcy Act 1967. This was later withdrawn.

The appellant then filed the originating summons for a declaration that the respondent had accepted the offer to purchase the said land and for an order that the respondent do execute the sale and purchase agreement and complete the sale. There are two issues to be decided. First and more importantly, whether a valid contract has been formed between the parties even though a valid sale and purchase agreement had not been executed yet. Secondly whether it is justifiable to refuse the appellant the reliefs sought for.

In the circumstances of this case we find no difficulty in holding that a valid enforceable contract had materialised between the parties. The offer to sell was made by the respondent and this offer was accepted by the appellant. In accordance with the terms of the sale, the appellant remitted the 10% deposit amounting to RM190,000 which amount was duly received by the respondent and they issued a receipt for it. Therefore, a valid enforceable contract had been formed. The parties have been identified, the property, the price and the terms too have been identified with sufficient certainty. Such an agreement is enforceable as if it was embodied in a sale and purchase agreement. Our finding is fortified by the decision in *Charles Grenier Sdn. Bhd. v. Lau Wing Hong* [1997] 1 CLJ 625; [1996] 3 MLJ 327.

After the respondent had accepted the RM190,000 they appeared to have a change of heart. They then requested the government valuer to value the said land and the government valuers came out with a report that the said land was worth RM3.765 million. The learned judge accepted this and held that there was inadequacy of consideration as the purchase price was grossly under-valued and the agreement was void. We are of the view that

the learned judge went off tangent when he considered ss. 21 and 26 of the Contracts Act 1950. The learned judge held that the inadequacy of the consideration may be taken into account in determining the question of whether the consent of the promisor was freely given. He held that the respondent did not freely consent to sell the said land to the appellant at the agreed price. Therefore he held that the agreement is void. He thereby concluded that since the value of the said land as agreed by the respondent was grossly under valued, the respondent is at liberty to refuse to complete the contract. We are of the view that the second valuation given after the contract had been formed is irrelevant and ought not to be considered. The respondent ought to have the value of the said land determined before they made the offer to sell. Having accepted the value to be RM1.9 million, they made the offer to the appellant who accepted the offer. Once the respondent accepted the deposit of RM190,000 a valid and enforceable contract had materialised. Had the appellant failed to pay the balance of the purchase price within the stipulated period of three months the respondent would be entitled to forfeit the deposit and the contract would come to an end. Therefore the question of the consent of the promisor not given freely does not arise. The learned Federal Counsel conceded that it is not in issue that the consent was not freely given.

We held that the learned judge erred when he concluded that the difference in the value of the said land was bordering on misrepresentation at its lowest and fraud at its highest. There was no evidence of any misrepresentation or fraud. The respondent openly entered into this agreement without any misrepresentation by any party. Their omission or neglect to obtain an independent opinion on the value of the said land before they made the offer to the appellant ought not to be blamed on the appellant. We would conclude by quoting what was said in the *Charles Grenier's* case *(supra)* at p. 335:

> Unless the approach we have stated is adopted, a party to a contract who after having concluded his bargain – entertains doubts as to the wisdom of the transaction, may be in the unfairly advantageous position to invent all sorts of imaginary terms upon which disagreement may be expressed when the more formal document is being prepared in order to escape from his solemn promise. Businessmen would find the law to be a huge loophole and commerce would come to a virtual standstill.

We hold that the learned judge erred in dismissing the appellant's OS. We allowed the appeal with costs here and below entered judgment for the appellant in terms of prayers 1 and 2 of the OS and ordered that the deposit be refunded.